

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5916 of 2007()

[CRIME NO.760/06 OF CHALAKUDY POLICE STATION]
.....

: PETITIONER

ANTONY, S/O. THATHAMPILLY VARGHESE,
KUTTIKADU, MUKUNDAPURAM TALUK.

BY ADV. SRI.P.I.DAVIS

RESPONDENTS:

SUB INSPECTOR OF POLICE,
CHALAKUDY POLICE STATION, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.5916 of 2007

Dated this the 1st day of October 2007

O R D E R

Application for anticipatory bail. The petitioner is the third accused. Altogether there are five accused persons now. The crime has been registered on the basis of a private complaint filed by the de facto complainant before the learned Magistrate and referred by the learned Magistrate to the police under Section 156(3) Cr.P.C. The crux of the allegations is that a forged assignment deed has been executed showing the de facto complainant as the executant in his capacity as power of attorney holder of one Shaju. According to the de facto complainant, he has not executed any such document. He had handed over the instrument of power of attorney to the first accused. The second accused is the transferee. The petitioner herein, the third accused is the attester to the document. According to the complainant, the petitioner, the third accused has falsely identified the executant of the document to be the de facto complainant. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner, at worst, is only an attester to the document. He is an employee in the office of a document writer. He has subscribed the

signature without any mala fide or culpable intentions. Accused 1 and 2, the person in whose possession the instrument of power of attorney was and the transferee under the allegedly forged document have already been granted anticipatory bail. In these circumstances, the petitioner may not be compelled to endure the undeserved trauma of arrest and detention, submits the learned counsel for the petitioner.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that the mere fact that accused 1 and 2 have undeservedly been granted anticipatory bail is no reason for the petitioner, the third accused also to claim anticipatory bail. The person who had executed the document in favour of the second accused has not been ascertained so far. Custodial interrogation of the petitioner is absolutely essential to identify and ascertain such executant, the petitioner being the attester to that forged document. In any view of the matter, submits the learned Public Prosecutor, there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to follow the ordinary course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition raised by the learned Public Prosecutor. The order granting anticipatory bail to accused 1 and 2 has not been produced before me. I am unable to ascertain the reasons which weighed with the court to grant anticipatory bail to accused 1 and 2. Be that as it may, I need only mention that I find absolutely no features in this case which would justify the grant of anticipatory bail to the petitioner/third accused who admittedly had attested the signature of the executant in the allegedly forged document. This, I am satisfied, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007